



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Department of Health Professions, Board of Counseling
VAC Chapter Number:	18 VAC 115-60-10 et seq.
Regulation Title:	Regulations Governing the Practice of Licensed Substance Abuse Treatment Professionals
Action Title:	Time-limited Waiver of Certain Requirements.
Date:	December 14, 2001

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Board is proposing a one-year waiver of the licensure requirements in the current regulations for individuals who hold certain combinations of education and work experience in substance abuse. This is in compliance with a statutory mandate that the Board provide for a time period of not less than one year whereby individuals who possess qualifications, education or experience acceptable to the Board will be granted the license.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

18 VAC 115-60-10 et seq. was promulgated under the general authority of Title 54.1 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

§ 54.1-2400. General powers and duties of health regulatory boards. --The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*

7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*

8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*

9. *To take appropriate disciplinary action for violations of applicable law and regulations.*

10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*

11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*

12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

§ 54.1-3508 specifically mandates that the Board establish a time-limited provision for licensure of individuals who do not meet the requirements in current regulation, but have qualifications that are “acceptable” to the Board.

§ 54.1-3508. Licensure of certain persons possessing substantially equivalent qualifications, education or experience. -- Notwithstanding the provisions of § 54.1-3507, (i) the Board may issue a license as a licensed substance abuse treatment practitioner to a person who,

after the effective date of the regulations promulgated pursuant to subdivision 7 of § 54.1-3505, has applied for such a license and who, in the judgment of the Board, possesses qualifications, education or experience substantially equivalent to the requirements of § 54.1-3507; however, any such applicant shall have completed at least one year of supervised clinical experience in substance abuse treatment, and (ii) for a period of time to be determined by the Board but not less than one year after the effective date of the regulations, the Board shall issue such a license to any such person who, in the judgment of the Board, possesses qualifications, education or experience acceptable to the Board and has completed at least one year of supervised clinical experience in substance abuse treatment.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

If the Board does not develop a time-limited provision for licensure of individuals who do not meet all of the licensure requirements, it will be out of compliance with the legislative mandate. In the effort to develop requirements, the Board has taken into consideration the kinds of education and experiences that will protect the public health and safety by conferring competency for independent practice, which includes the ability to identify psychological and emotional problems, which coexist with the substance abuse, and appropriately refer clients for treatment of these problems. A considerable amount of public comment received during development of the new regulations addressed the fact that formal educational opportunities in this emerging profession have been scarce, and many of the most highly skilled counselors gained their knowledge from a combination of courses, workshops, seminars and independent study. In an effort to be inclusive of professionals who have obtained their training from a wide variety of sources, the Board developed combinations of education and experience which it feels provide equivalent training for competent independent practice.

In order to implement the mandate of § 54.1-3508, the Board must establish a regulation setting forth criteria that it would consider acceptable for granting licensure to individuals which will authorize them to provide substance abuse treatment services independently. The Board established the current education and experience requirements based on what it determined were the minimum requirements to ensure safe and competent independent practice to protect the health and safety of the clients using the services of these practitioners. The new mandate challenged the Board to develop additional avenues for licensure, which will ensure the same level of competence as the current regulation and afford the same protection to the public engaging the services of licensees.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The Board is proposing a new section to the regulation that will establish two alternative combinations of education and work experience in substance abuse, which will qualify individuals for licensure during a one-year period. Individuals in all categories will have to hold a current Virginia certification in substance abuse in good standing, pass a board approved examination in substance abuse, and submit comprehensive reports from three licensed mental health professionals, one of which must be licensed in Virginia affirming competence in all areas of practice.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

Advantages to applicants:

Qualified individuals who have spent many years in the substance abuse treatment profession, but find attainment of a master's degree with 60 graduate hours unfeasible, will have an avenue to obtain the license. Licensure will grant these individuals the authority to practice independently, which they cannot currently do with the certification. Licensure will open more job opportunities in the public and private sector where licensure is required.

Disadvantages to applicants:

There will be no disadvantages to potential applicants. Some individuals who already hold licenses under the Board have submitted comment that the waiver would reduce the integrity of the license and impact third party payments, but the Board cannot predict how third party payors will respond to requests for payments by those licensed under the waiver.

Advantages to the public:

There will be a greater availability of licensed therapists with expertise in substance abuse treatment who can offer services in both the public and private sectors. Since settings exempt from licensure requirements (primarily government and non-profit agencies) are increasingly requiring licensure for their staff in order to obtain third party payments, there will be a greater

pool of individuals trained in substance abuse that they may consider hiring to provide substance abuse treatment services.

Disadvantages to the public:

There will be no disadvantages to the public:

Advantages or disadvantages to government agencies:

Agencies who now hire other licensed professionals, but might want someone with more substance-abuse specific experience, will have a larger group of individuals to choose from.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Estimated Impact of the Regulations

A. Projected cost to the state to implement and enforce:

(i) Fund source: As a special fund agency, the Board of Counseling must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.

(ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

(iii) One-time versus ongoing expenditures: The agency will incur some costs (less than \$1000) for mailings to the Public Participation Guidelines Mailing List, conducting a public hearing, and sending copies of final regulations to regulated entities.

B. Projected cost on localities:

Employees of government agencies are exempted by law from the licensure requirement. Agencies may elect to pay the licensure application and examination fees for qualified certified substance abuse counselors on their staff. However, this would depend on the policy of individual agencies and is not a requirement of the Board of Counseling or its regulations.

C. Description of entities that are likely to be affected by regulation:

The entities that are likely to be affected by this regulation would include certified substance abuse counselors who qualify by one of the two options for grandfathering persons without a master's degree in substance abuse.

D. Estimate of number of entities to be affected:

The Department has no information on the number of certified substance abuse counselors (CSAC's) who may seek licensure under this proposal. According to a board survey conducted in February 2000, approximately 55.5% have a master's degree, 27.7% of the CSAC's have a bachelor's degree, 7.8% have an associate's degree and 6.4% have a high school/GED degree. In each of those categories, it is unknown how many would qualify by virtue of their years of experience or graduate educational hours in a mental health field. Since the license is not required to work in publicly-supported mental health settings, it is doubtful that more than 100 of the approximately 1,200 CSAC's will seek licensure under the waiver provisions.

E. Projected cost of the regulation for affected individuals.

The cost of initial licensure by examination would be \$140; thereafter, the annual renewal fee would be \$105. Persons seeking this license would already be certified as substance abuse counselors, paying an annual renewal fee of \$55, so licensure would cost \$50 over what the CSAC currently pays for a voluntary certification. Regulations require passage of an examination acceptable to the Board – if that is the examination for certification as a Master Addiction Counselor offered by the National Association of Alcohol and Drug Abuse Counselors (NAADAC), the cost would be \$145 for NAADAC members and \$225 for non-members. Those costs may be borne by the individual applicant or may be underwritten by an employer who wants to have counselors licensed for reimbursement purposes. Substance abuse counselors do not have to be licensed unless they choose to practice independently in a private setting.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

18 VAC 115-60-55. Time-limited waiver of certain licensure requirements.

A new section is added to permit individuals with certain qualifications to apply for licensure for a period of one year following the effective date of the regulations. All applicants seeking the waiver of certain requirements would be required to pass an examination as specified by the Board, hold current certification as a substance abuse counselor for the Board, and submit three

comprehensive reports from licensed mental health professionals affirming competence in areas of knowledge and in the applicant's ability to practice independently.

In addition, there are specific requirements for years of experience, which may be combined with hours of graduate education in a mental health field. Persons with a master's degree in a mental health field may be licensed with five years of experience and 36 graduate hours in a mental-health field with certain course work; and persons with a bachelor's degree may be licensed with 10 years of experience and 30 graduate hours in a mental-health field with certain course work.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

During its development of the initial requirements for licensure of substance abuse treatment practitioners, much of the public comment the Board received addressed the interpretation of § 54.1-3508 which authorizes the board to issue a license to individuals with "substantially equivalent" qualifications, education, or experience to the requirements of § 54.1-3507. Some individuals felt strongly that the intent of the 1997 General Assembly was to provide for licensure of experienced certified substance abuse counselors, who may have no formal education beyond a high school diploma or G.E.D. Others argued that the General Assembly had clearly intended that no one should be licensed with less than a master's degree, based on previous rejection of a 1996 bill, which proposed a three tiered licensure system for different levels of education. Representatives of the professional associations in substance abuse counseling admitted that their memberships were split on this issue.

When developing the current licensure regulations, which took effect on January 19, 2000, the Board attempted to develop criteria that would ensure competency for independent practice by individuals who do not hold master's degrees. The members had two concerns with promulgating a permanent equivalency to a master's degree. One concern was that it would diminish the integrity of the license by providing a path to licensure for those without an advanced degree as required for all other behavioral science licensees who practice autonomously. The other concern was that an independent practitioner without a strong academic foundation in mental health counseling would not have the level of training necessary to competently manage substance abuse issues and identify coexisting psychological and emotional problems which are estimated to occur in 95% of substance abuse disorders. As an alternative, the Board considered developing a one-year provision for licensure of individuals without master's degrees, but was advised by the Assistant Attorney General that statute, at that time, did not authorize development of a time-limited licensure requirement.

To provide resolution to the issue, the Virginia Association of Alcoholism and Drug Abuse Counselors supported legislation enacted by the 1999 General Assembly (Chapter 863), which amended § 54.1-3508 to mandate that the Board develop licensure requirements for a period of **not less than one year** to license individuals who do not meet the current requirements. The proposed regulations respond to that mandate.

Before and during the development of this regulatory proposal, the Board considered numerous comments and proposals submitted over the past three years by individuals, professional associations, and educational programs concerning the grandfathering provision in the Code of Virginia. The Board took these proposals into consideration and considered three time-limited options for licensure. For each option, the applicant must hold a current certification as a substance abuse counselor, achieve a passing score on a Board-approved exam, and present three comprehensive reports attesting to competency to practice autonomously

	Option I (One year window)	Option II (One year window)	Option III (One year window)
Education	Masters degree with 36 graduate hours in human services	Bachelor’s degree with 30 graduate hours in human services	High School or GED
Post-Certification Experience in substance abuse treatment	Five years	Ten years	Twenty years
Supervisory experience			Five years

Initially, the Board considered a three-year window for Option II to allow individuals without a bachelor’s degree sufficient time to acquire their education. During the course of discussion over this proposal, it was agreed that a one-year window for all options was reasonable and equitable. Debate within the substance abuse profession over the time-limited waiver options has been ongoing since 1997, so CSAC’s who aspire to licensure status have already had almost four years to gain the educational hours and degrees necessary.

The third option, which does not require an advanced degree is restricted to individuals who have been working as certified substance abuse counselors for at least twenty years and who have supervised other substance abuse counselors for at least five years. That option was considered and dropped, and is no longer being considered. In reaching this decision the Board was of the opinion that the proper level of competence could only be reached through a sequence of formal study and training. Courses critical to competency such as psychopathology, appraisal, research, abnormal behavior, and diagnostics cannot be obtained at the high school level nor could the material be sufficiently covered in seminars and workshops. In that the majority of the afore mentioned courses are graduate level, a person possessing only a high school diploma or GED would also be precluded from taking these courses.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

The debate about “grandfathering” or time-limited waiver of certain requirements for licensure has spanned several years. Over the past three years, the Board has heard public comment on this issue presented at almost every meeting of the Regulatory Committee and the full board. Persons from the licensed counseling field generally did not support “grandfathering” substance abuse treatment practitioners who did not have a master’s degree, since many clients are dually diagnosed and require other professional treatment. They expressed concern that the waiver would have a negative impact on public safety, liability, third party reimbursement and credibility of licensed professionals. Counseling organizations expressed concern that individuals with less than graduate level training have relatively little knowledge of the research literature regarding theories of mental health and substance abuse treatment as well as the latest treatment approaches. They also spoke against any grandfathering for the substance abuse treatment practitioner license that would last more than one year.

Supporters have argued that a decision not to “grandfather” certified substance abuse counselors (CSAC’s) would negatively impact the availability of treatment and substance abusers currently in the system. Some testified that academic credentials were a poor gauge of a practitioner’s success in treating addictions problems. The Virginia Association of Alcohol and Drug Abuse Counselor’s appealed to the board to recognize that equivalent skills can be demonstrated through experience as well as formal education and recommended that the Master’s Addictions Counselor (MAC) examination be used to gauge the competency of experienced counselors. They also supported a three-year period for “grandfathering” persons under the waiver provisions.

Interested parties were given several opportunities to provide both written and verbal public comment on the “grandfathering” issue as well as the proposed alternatives. The first of which was the Board’s acceptance of written comment between November 6, 2000 and December 6, 2000. In conjunction with the NOIRA, written comments were accepted between September 24, 2001 and October 26, 2001. In addition, a public hearing, chaired by a Board member, was held on October 24, 2001 to receive public comment. And finally, several interested parties used the public comment period during regular Board meetings to provide input regarding this issue.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The Board has made every effort to ensure that the changes are clearly written and easily understood by the licensees who will be affected by the changes. The Assistant Attorney General who provides counsel to the Board of Counseling has been involved during the development and adoption of proposed regulations to ensure clarity and compliance with law and regulation. Since the regulations were drafted with input from all interested parties, the Board is satisfied that the regulation is clearly written and will be easily understandable by the individuals affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The proposed amendments to these regulations will be reviewed following publication in the Register and the 60-day public comment period. If there are any oral or written comments received, the Board will consider revisions to the proposal prior to adoption of final regulations.

Public Participation Guidelines of the Board (18 VAC 115-10-10 et seq.) require a thorough review of regulations each biennium. Therefore, the Board will review this regulation in 2003-04 and will recommend amendments as necessary.

In addition, the Board receives public comment at each of its meetings and will consider any request for amendments. Petitions for rule-making also receive a response from the Board during the mandatory 180 days in accordance with its Public Participation Guidelines.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The changes will have no effect on the authority or rights of parents in the education, nurturing and supervision of their children. Increased accessibility to licensed substance abuse treatment practitioners may help individuals suffering from an addiction achieve and maintain economic self-sufficiency and self pride and assume responsibility. This may also strengthen the marital commitment for individuals or their spouses who need substance abuse services. The application and examination fees will impact individuals who are obtaining the license for the first time, but are not likely to discourage those who want to hold the license and use the title.